(1)

Division Bench (Civil)

(3)

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR.

Misc. Petition No. 2595 /1991.

PETITIONERS :-1. Chamaru Ram son of Shri Anturam aged about 45 years.

2. Manijar Ram son of Shri Anturam aged about 57 years.

3. Badenoni wife of Shri Dalluram aged about 70 years.

4. Banshdhari son of Shri Bechuram aged about 35 years.

5. Bhuwal son of Bhaturam, aged about 45 years.

6. Ramdhani son of Shri Daluram aged about 45 years.

7. Bhadar son of Iartur, aged about 60 years.

8. Bhogli Mahto Rajwar, aged about 60 years

9. Anandi ram , aged about 50 years.

All caste-Rajwar, Agriculturist, resident of Bansipur, Patwari Halka No. 17, Tahsil-Pratappur, District-Sarguja (M.P.)

OFFICE OF THE ADVOCATE GENERAL, Regn No. Dt: 12-8-91 MADHYA PRADESH, JABALPUR.

Received
Signature
12-8-91

- Versus -

RESPONDENTS :- 1. State of Madhya Pradesh through-Secretary, Revenue Department, Vallabh Bhavan, Bhopal.

2. The Collector, Sarguja (Ambikapur), (M.P.).

COMMISSIONER OFFICE JABALPUR 12/8/91

PETITION UNDER ARTICLES 226/227 OF THE CONSTITUTION OF INDIA.

The petitioners, named above, beg to submit as under :-

1- That, the petitioners are law abiding and

AFR

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... WP 2595/91 ..... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

23-06-2005

Smt. Renu Kochar, counsel for the petitioners.

Shri Sandeep Dubey, Govt. Advocate for the State.

Heard learned counsel for the parties.

2. By this petition, the petitioners have challenged the order dated 27-10-1990 (Annexure-P/1) passed by respondent No.2 Collector, Sarguja (Ambikapur), whereby the Collector directed the Tahsildar, Settlement Officer, Sub Divisional Officer and the Sub Registrar of Ambikapur, not to allow the sale of agricultural land given on lease (Patta) as well as not to allow the partition or distribution of agricultural land in small pieces.

3. Smt. Kochar, learned counsel for the petitioners contended that the petitioners have been granted bhoomiswami rights. It is further contended that the settlement was made during the period 1942 to 45 and prior to the settlement it was in possession of their ancestors who were harvesting. It is also contended that they have also

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मामला क्रमांक ..... WP 2595/91 ..... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —2—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

acquired bhoomiswami right under Section 158 and as such they have a right of transfer subject to the provisions and conditions mentioned in Section 165 of the M.P./C.G. Land Revenue Code. It is also contended that the Land Revenue Code does not confer any authority on the Collector to pass such an order and the matter is not covered under Section 165 of the M.P./C.G. Land Revenue Code. Learned counsel contended that the Collector has issued the order without any authority. It is also contended that when the petition was filed before the High Court of Madhya Pradesh in the year 1991 the impugned order dated 27-10-1990 (Annexure-P/1) was stayed by the Court vide order dated 16-8-1991.

4. The State has filed the return. The stand taken by the State is that it was in practice that if the land of the petitioners/lease holders is acquired for the colliery area then the persons whose land is acquired for the said purpose, in the colliery service will be given at least to one person from the family. On the basis of this rumor the land owners and

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

the persons who were interested to get the employment in the colliery organization tried to purchase the land from the land holders with an object to get employment after acquisition of the land by the collieries authority. It is further stated that to check such fictitious transfers with an object to get service in the collieries the Rehabilitation Department of Government of Madhya Pradesh issued a circular No.5-8-90/28 dated 25th September, 1991 (Annexure-R/1). In the said circular it has been stated that only those persons shall be entitled to get the service in the coal mines whose entire land has been acquired in the collieries area.

5. Smt. Kochar, learned appearing for the petitioners contended that the petitioners are having Bhoomiswami right and the land was received from their fore fathers. It is also contended that the petitioners have a right to deal with the property in any manner subject to the conditions specified under Section 165 of the Land Revenue Code. It is also contended that the right cannot be curtailed by an executive

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —५—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

order and that too on the rumors. The employment policy may be made one way or the other in accordance with law. Viewed and tested on the touchstone of settled principles of law, the order is illegal and contrary to law. The order of the Collector is not at all sustainable. Accordingly, the petition is allowed with costs and the impugned order dated 27-10-1990 (Annexure-P/1) is quashed.

7. Counsel fee as per scale, if certified.

8. The security, if any, deposited by the petitioners be refunded as per rules.

Certified copy as per rules.

Sd/-
Fakhruddin
Judge

Gowri